

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FSH:BOS:TL-N-3409-01

BJLaterman

date:

to: Director, Area One
SBSE Compliance - Technical Support E:PPQMB:D. Lacourse STOP 41175

Att: Rosemary Piper, Manager, Team 1327, LMSB:CTM

from: Associate Area Counsel, LMSB, Boston

subject:

Form 872

Taxable Year [REDACTED]

Statute of Limitations: [REDACTED]

This memorandum responds to your request of May 21, 2001 that we give advice regarding extending the statute of limitations for the above mentioned corporation's [REDACTED] taxable year. This memorandum should not be cited as precedent.

[REDACTED] is a Delaware corporation which filed a non-consolidated corporate federal income tax return for its [REDACTED] taxable year. [REDACTED] is a Delaware corporation. On [REDACTED], [REDACTED] and [REDACTED] entered into an Agreement and Plan of Merger. The Agreement provided that [REDACTED] would acquire all the issued and outstanding stock of [REDACTED] in exchange for [REDACTED] class A common stock in a transaction that was intended to qualify as a reorganization under I.R.C. §368. In order to effectuate the transaction, [REDACTED] formed a wholly owned transitory merger subsidiary which merged into [REDACTED] with [REDACTED] as the surviving corporation. The acquisition occurred on [REDACTED]. As a result of the acquisition, [REDACTED] became a wholly owned subsidiary of [REDACTED] and began filing as a member of the [REDACTED] and Subsidiaries consolidated group. You wish to extend the statute for [REDACTED]'s [REDACTED] taxable year.

I.R.C. §6501(a) provides that as a general rule, tax must be assessed within three years of the filing date of the return. In accordance with I.R.C. §6501(c)(4), a taxpayer and the Internal Revenue Service may consent in writing to extensions of time for making assessments. The regulations under I.R.C. §6501(c)(4) do

not specify who may sign consents. It is the position of the Service that, in general, the rules applicable to the execution of the original returns also apply to execution of consents. Rev.Rul.83-41 1983-1 C.B.349, clarified and amplified by Rev.Rul.84-164, 1984-2 C.B. 305. Under I.R.C. §6062, the return of a corporation shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to so act. Therefore, the same persons who are authorized to sign a return on behalf of a corporation may also sign a consent to extend the time to assess tax. Rev.Rul.83-41 1983-1 C.B.349 clarified and amplified by Rev.Rul.84-164, 1984-2 C.B.305.

In the present case, the taxpayer who filed for [REDACTED] is still in existence as a legal entity. As a result of the reorganization, the ownership of the taxpayer has changed. The transfer of the taxpayer's stock to [REDACTED] by itself does not indicate transferee liability. Therefore, a consent secured from [REDACTED] signed by a current officer or director will extend the statute for the [REDACTED] taxable year.

This office recommends that you pay strict attention to the rules set forth in the Internal Revenue Manual ("IRM"). Specifically, IRM 121.2.22.3 requires use of Letter 907(DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929(DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the authorized manager should promptly sign and date it in accordance with Treas.Reg §301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 55348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that §3461 of the IRS Restructuring and Reform Act of 1998, codified in I.R.C. §6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy this requirement, Publication 1035, "Extending the Tax Assessment Period," must be given to the taxpayer when you solicit the statute extensions.

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This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If we can be of any further assistance, the undersigned can be reached at (617) 565-7855.

BARRY J. LATERMAN
Special Litigation Assistant